

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Daniel'La Deering,)	
)	File No. 20-CV-1534
Plaintiff,)	(DSD/ECW)
)	
vs.)	Minneapolis, Minnesota
)	June 28, 2023
Lockheed Martin Corporation,)	10:00 a.m.
et al,)	Courtroom 14W
)	
Defendants.)	

BEFORE THE HONORABLE DAVID S. DOTY

UNITED STATES DISTRICT COURT JUDGE

(MOTIONS HEARING)

Official Court Reporter:

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24 Proceedings reported by court reporter; transcript
produced by computer.

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1 P R O C E E D I N G S

2 IN OPEN COURT

3 (10:00 a.m.)

4 THE COURT: Morning, do you all want to take a
5 seat please.

6 This morning we have on our docket the matter of
7 Daniel'La Deering versus Lockheed Martin Corporation, and
8 may I have appearances, please?

9 MR. BURKHARD: Michael Burkhard on behalf of
10 Lockheed Martin, Joe Schmitt and Ben Jacobs.

11 THE COURT: I'm sorry, would you turn on your mic,
12 please? Thank you. Appreciate that.

13 MR. BURKHARD: I apologize, Your Honor. Michael
14 Burkhard, Joe Schmitt and Ben Jacobs on behalf of Lockheed
15 Martin.

16 THE COURT: Thank you.

17 MS. SCHAFFER: Good morning, Your Honor. Kaarin
18 Nelson Schaffer --

19 THE COURT: Would you turn on your mic also?
20 Thank you.

21 MS. SCHAFFER: I will get closer. Kaarin Nelson
22 Schaffer, Heidi Fessler, Bill Egan and Bill Gilbert all here
23 on behalf of Ms. Deering, who is sitting next to me.

24 THE COURT: Good morning. The motion this
25 morning, the motion we set to have here is an emergency

1 motion for sanctions and dismissal with prejudice filed by
2 Lockheed.

3 We also have another motion, as I often say, "over
4 the transom." I used to say that and then people would say,
5 "what do you mean 'over the transom'?" Most young people
6 have no clue as to what a transom is, so then I spend five
7 minutes describing what a transom is.

8 Back in the old days, the clerk's office always
9 had a little window above the door that was used for
10 ventilation that would often be open, and when we couldn't
11 get things filed on time, we would toss them in over the
12 transom virtually.

13 We got a couple motions or a motion and a
14 response. It's amazing to me how fast you lawyers can
15 react. Technology is really wonderful or a real pain in the
16 neck actually for both sides. I know it is.

17 But, anyway, I'm going to deny the motion for a
18 continuance, and I won't give you the reasons right now.
19 There are a whole number of reasons, but I think it's
20 inappropriate and out of time. But, in addition, I think
21 there's probably not a real reason to do that because we're
22 going to be focusing purely on the facts of Ms. Deering's
23 employment and that's really the key here. We're not
24 focusing on any of the other issues of the case. We're just
25 focusing on that issue because those are the issues brought

1 to the fore by the Motion for Dismissal.

2 So, Mr. Burkhard, I understand you're going to be
3 arguing for the defendant, correct?

4 MR. BURKHARD: That's correct.

5 THE COURT: And I think you've talked to my clerk.
6 You know, I limit time. And, you know, people accuse me of
7 explaining too much. My kids do especially, too much
8 detail. My grandchildren say "TMI." I first learned what
9 TMI was from my great-grandchild. TMI, too much
10 information. But, anyway, I just want to tell you that the
11 -- well, let's not go there. Come on up, Mr. Burkhard.

12 MR. BURKHARD: I got the gist of it, Your Honor.

13 THE COURT: And what I was really going to explain
14 is why we're limiting it to so much time. You know, I was a
15 lawyer for so long, and I always found out if I was limited
16 in time I gave better arguments, and I find the same thing
17 is true here when I limit the lawyers' time, they focus
18 instead of giving me a whole lot of stuff that I don't want
19 to hear about or know about, and they focus in. I know
20 you're going to do that.

21 So if you would please, I've read the materials
22 that both parties have provided. I think I know what the
23 issue is before us. I thought I maybe explained it
24 succinctly a minute ago. And so I don't want to hear about
25 the issues in the case other than what we're dealing with

1 here this morning on this particular motion, so go ahead,
2 please.

3 MR. BURKHARD: Thank you, Your Honor. Again,
4 Michael Burkhard on behalf of Lockheed Martin.

5 THE COURT: And make sure, one of the things I
6 find, new lawyers, back when I was a young lawyer 150 years
7 ago, we didn't have microphones, and we had to -- if we had
8 to have a judge, and I had a judge that was totally deaf,
9 Gunnar Nordbye was his name. I don't know if some of you
10 know that name in history. But Gunnar was totally deaf. I
11 talked to him like this, and the court reporter was sitting
12 right in front of me about as far away as the table is, and
13 said, "I can't hear you." And I knew what he was saying.
14 You've got to talk louder because Gunnar is not hearing you,
15 so I have a service connected disability. If you talk nice
16 and loud, I can hear you with the microphones just fine, but
17 if you would do that, please. Thank you.

18 Now, we haven't taken your time away. This is
19 just explanation.

20 MR. BURKHARD: Only five seconds, Your Honor.

21 THE COURT: Okay. Go ahead. Well, we'll give
22 that you at the tail end because you saved some time for
23 rebuttal.

24 MR. BURKHARD: I did. I reserved five minutes,
25 Your Honor.

1 THE COURT: All right.

2 MR. BURKHARD: All right. Thank you, Your Honor.
3 Again, Michael Burkhard on behalf of Lockheed Martin.

4 Your Honor, cutting right to the chase of the
5 motion that we filed.

6 THE COURT: Good.

7 MR. BURKHARD: We filed this motion because what
8 Lockheed Martin learned around the time that the trial
9 exhibits for this case were being presented, the list, and
10 then, ultimately documents per the Court's order, first
11 listed on June 5th and then actual documents showing up on
12 June 7th, we learned for the first time that Ms. Deering had
13 in fact secured employment at a different company in which
14 she had represented to us throughout discovery, and that
15 company's name is Anaplan. The prior company is nVent.

16 It's important to bear those two things in mind
17 because it turns out there are two different moments of
18 perjury in her deposition.

19 The first that started with our motion was to
20 learn that Ms. Deering who was deposed on November 1st,
21 2021, under very simple questions by myself as to whether
22 she had engaged in any additional job efforts since she had
23 started working at nVent, and the answer was no. There was
24 no mention of Anaplan. We had never been produced any
25 documents.

1 Now, what we learned after we filed our motion on
2 June 22nd, plaintiffs made an additional production of
3 documents that included pay stubs from nVent. When we
4 looked at those pay stubs, and we'll show those to you in a
5 moment, Your Honor, the pay stubs clearly show in the last
6 page of the document that, in fact, Ms. Deering's last day
7 of employment at nVent was October 22, 2021. Nine days
8 before her deposition.

9 So in her deposition as she sat there answering
10 these questions, she knew, one, she was no longer employed
11 at nVent; and she knew, two, that she had already signed an
12 offer of employment at Anaplan on October 12th of 2021, and
13 she was scheduled to start employment on November 8th.

14 We submitted the deposition testimony of the
15 questions where I asked Ms. Deering in detail twice, "did
16 you ever look for any alternative employment once you
17 started working for nVent?" And there's a little context
18 that's important.

19 They presented interrogatory responses. We asked,
20 as we detail in our papers for, tell us all of your
21 employment efforts post-Lockheed Martin. In their first
22 response, which was December of 2020, they submitted a chart
23 that listed a bunch of jobs that purportedly Ms. Deering had
24 been applying to. They never supplemented that chart, but
25 they did supplement their interrogatory responses in March,

1 and they were verified in April. Nothing had changed.

2 When I got to the deposition, one of the things I
3 was exploring is the chart itself. We saw a lot of flowerly
4 language in plaintiff's counsel's opposition suggesting I
5 was scrolling through a document too quickly. And they
6 submitted the video, Your Honor, and I was accused of
7 grilling Ms. Deering after the lunch break. And it's
8 possible, I've been accused of grilling a witness from to
9 time in a deposition, Your Honor. But there's no way anyone
10 with a straight face can look at the video and think that I
11 was grilling Ms. Deering in that section of the deposition.
12 I merely was asking her, "do you see this chart? The last
13 date on this chart is December 13, 2020. What I want to
14 know is did you look for additional work after 2020?" Her
15 response was, "well, I didn't start working for nVent until
16 February of '21."

17 So my next two questions to her, and this is
18 detailed on page 7-8 of our opening brief was, "okay, did
19 you look for additional work after you started working for
20 nVent?" She said, well, I'm not sure, I might have applied
21 for a couple between December and February."

22 I said, "okay, you might have applied for a couple
23 of positions between December and February, but is it
24 correct that you didn't look for any other work or seek
25 alternative employment after February or '21?" Answer,

1 "that is correct."

2 That was a lie. As it turned out, she did, and
3 she secured a job. That job she was making more money, more
4 lucrative than the nVent job, and she did not disclose that
5 information despite a supplemental document production on
6 October 29th, two days before her deposition, and three
7 supplemental productions after her deposition, two in
8 November and one in March of 2022. No documents about
9 Anaplan at all.

10 And in her deposition, there's no confusion about
11 the question that I asked her. There's no argument that she
12 was confused or didn't understand the question. There was
13 no objection from her counsel to any question that I asked
14 as if it was confusing or vague. And on December 1st, she
15 signed an errata sheet and made no changes at all, which is
16 attached to our reply brief, Your Honor.

17 What we learned in addition is as I mentioned
18 earlier is that when she started in her deposition, her last
19 day at nVent had already completed.

20 Joe, do you want to show that? Mr. Schmitt, if he
21 could, Your Honor, put that pay stub up.

22 And I would point out as he's doing that, Your
23 Honor, these documents are the final pay stubs from nVent.
24 Plaintiff's counsel had provided some pay stubs back in July
25 of '21. They never supplemented, and there's nothing in any

1 of their filing to suggest they ever --

2 THE COURT: By the way, are you seeing that on
3 your screens?

4 MS. SCHAFFER: We are, Your Honor.

5 THE COURT: Okay.

6 MR. BURKHARD: Your Honor, can I just step to the
7 table? Well, I can see this fine.

8 THE COURT: If you carry the microphone with you,
9 you can. I need you to talk to into a mic.

10 MR. BURKHARD: Your Honor, what I would point to,
11 you can see the highlighted portion of the pay stub. It
12 shows October 16th to the 22nd as the final salary. This is
13 the last and final page of any pay stub documentation, and
14 it shows salary pay-off. I mean vacation pay-out. That is
15 her last date of employment. There is no more compensation
16 from nVent beyond that date. There is no argument to
17 suggest that she was still employed when she sat at her
18 deposition.

19 The very first question I asked her, moments after
20 she was sworn in to tell the truth, after she confirmed she
21 was not on drugs or alcohol that would prevent her from
22 testifying truthfully, I asked her a very simple question,
23 "where are you currently employed?" Answer: "NVent."

24 I didn't stop there. I wanted to know what are
25 your job duties? What are your current role? She waxed

1 poetic about being on the leadership team and all the roles
2 and important duties that she had, all attached in our reply
3 brief because we didn't know that fact until June 22nd when
4 we finally got copies of these nVent pay stubs that
5 confirmed she was no longer working there on November 1st.

6 Those two acts alone are enough for this court to
7 dismiss with sanctions, but there's more because the
8 original interrogatory that was supplemented in March of '21
9 and listed all the jobs she was in, listed her as working as
10 a contract lawyer. It didn't even list nVent. She had been
11 working there for two months. She signed a sworn
12 verification in April of '21 that that was true.

13 They never told us she was working at nVent. My
14 partner Ben Jacobs found it on social media, and we had to
15 confront them in the summer and get records from nVent. The
16 entire time knowing that at that point she was caught, and
17 she had to testify, yes, I worked at nVent, and then she
18 doubled down by hiding the Anaplan information and then
19 doubled down again by not disclosing it, then doubled down
20 again in opposing our summary judgment motion.

21 She attached her own declaration, which attaches
22 her resume. That resume says for employment "nVent to
23 present." That is four months after she had started working
24 at Anaplan. That was submitted.

25 We went to two settlement conferences with an

1 obligation for them to present confidentially, of course, we
2 didn't get to see it, but a legitimate damages analysis that
3 was accurate. They clearly didn't do that. As Mr. Egan
4 admitted in his response, I had the numbers wrong. It's not
5 just the numbers wrong. If they're operating on Anaplan
6 documents, that wasn't disclosed.

7 We detailed in our brief to Judge Thorson that she
8 was working at nVent, so there's no way they mentioned
9 Anaplan in those documents, and they presented the wrong
10 calculations, which reduced her mitigation. When they
11 should have and did know and certainly one person knew, and
12 that person was Danny Deering. In every step of the way,
13 arguments to blame her lawyers. We've cited Eighth Circuit
14 case law, Supreme Court case law. That is not sufficient.
15 You do not get excused by blaming your lawyers.

16 We cited Eighth Circuit on point cases that a
17 lawyer, a 25-year employment lawyer who has experience in
18 the system, who is willing to commit perjury in her
19 deposition, who is willing to say, "I produced everything I
20 had," even though that wasn't true, also detailed in our
21 reply brief as we discovered from the nVent documents, that
22 if you're going to engage in that conduct and numerous
23 discovery abuses throughout the process, the appropriate
24 sanction is dismissal.

25 THE COURT: Do you want to finish up your thought?

1 And then if you left something behind here, you can cover
2 because you're going to get some rebuttal. Okay?

3 MR. BURKHARD: Thank you, Your Honor.

4 THE COURT: Thank you. Ms. Schaffer, why don't
5 you come on up, if you would, please.

6 The question I have of you and really in general,
7 because after reading all of this material, and now hearing
8 Mr. Burkhard's argument, is there any facts about when the
9 employment occurred and didn't occur and so forth? Are
10 there any facts that you take issue with? Let me know about
11 that, if you do.

12 And then would you let me know when you knew about
13 that she was working, that Ms. Deering was working for
14 Anaplan. When did you learn that? And how did you learn
15 that? You know, because you've been in this case not for
16 the full-time, but I want to know what you knew when you
17 knew it about her work at Anaplan. Okay?

18 And if you could, exactly when nVent ended, you
19 know? Those are the two crucial things I think that we're
20 looking at. So if you would include that in your, and, you
21 know, I haven't taken any of your time. So I would like you
22 to include those answers in your comments, if you would.

23 And, you know, you don't have the burden here. The
24 burden is on the defendant obviously, and so they're going
25 to get rebuttal and you don't, so make sure you tell me

1 everything you have totally. Okay. Thank you. Go ahead.

2 MS. SCHAFFER: I will do my best, Your Honor.

3 Thank you.

4 Your Honor, I want to start by highlighting what
5 we said in our motion, which is critical, which is that I
6 believe that the lawyers in this case have a conflict.

7 THE COURT: Make sure you talk into the
8 microphone. As I say, you know, and I hate to say this, my
9 hearing loss is on upper levels, so, unfortunately, I hear
10 lower levels better. So if a man has a high voice, I don't
11 hear him as well. Likewise, if a woman is speaking, and
12 then she has a lower voice. You have a medium voice, so if
13 you would just give a little more oomph so I can hear,
14 because I do want to hear every word you say.

15 MS. SCHAFFER: Thank you, Your Honor.

16 I want to start by highlighting that we do have a
17 conflict in this case. The motion and the reply brief that
18 the defendant has submitted does raise a question. It
19 essentially did Ms. Deering intentionally do something
20 and/or did her lawyers intentionally do something or make
21 mistakes?

22 And the proper defense for Ms. Deering in much of
23 this or an appropriate defense is that it was the fault of
24 her lawyers, which, of course, puts our personal interests
25 at issue and against Ms. Deering. Obviously, I'm prepared

1 to argue this morning, Your Honor, but I want to make clear
2 that that's our position, and Ms. Deering has not waived
3 that conflict today.

4 THE COURT: And I understood that, but I'll say
5 we're not going to that issue this morning. There's going
6 to be later discussions and whatever happens from here on
7 in. But I want to make sure that you get a chance to talk
8 about what we're dealing with this morning, which is, you
9 know, and it's very clear I think from the facts that I've
10 been told and recited and then have been found in the
11 deposition and other things that Ms. Deering took personal
12 interest in this and also made personal statements, signed
13 off on personal declarations, and was in a deposition taking
14 her deposition.

15 And so the lawyers were there, a lawyer was there,
16 but the obligation of a lawyer doesn't necessarily extend,
17 you know what the obligation of a lawyer is. We don't want
18 to get into that today, so just talk about what we're
19 dealing with here today, which is those facts I've laid out.
20 When did she leave nVent? When did she start work at
21 Anaplan? Those are crucial times, and I think they kind of
22 set the stage for the motion that the defendants are making,
23 but go ahead if you would.

24 MS. SCHAFFER: Understood, Your Honor.

25 THE COURT: By the way, we pause the clock. My

1 clerk is very good at this, so if she catches me talking,
2 she normally pauses, so.

3 MS. SCHAFFER: Thank you, Your Honor.

4 In response to the very specific questions that
5 Your Honor is asking, with respect to nVent, Ms. Deering's
6 last day actually working at nVent we believe was around
7 October 22nd, but with all due respect, have been unable to
8 confirm that.

9 THE COURT: Well, but you saw the document they
10 were shown, do you disagree with that document? Do you
11 think it's wrong and not correct?

12 MS. SCHAFFER: We do not disagree with that
13 document. We produced that document, Your Honor.

14 However, Ms. Deering's understanding at the time
15 of her deposition was that she was on vacation from nVent,
16 and part of the reason that that extended beyond the pay
17 stub is because she had been given a sign-on bonus, part of
18 what she was required to repay, so her understanding was
19 that part of the repayment of that bonus was essentially
20 coming off of her vacation time. So at the time of her
21 deposition, Ms. Deering understood that she was still an
22 employee of nVent.

23 And, Your Honor, right now, she's in a similar
24 situation with Anaplan, slightly different, but she's been
25 laid off from Anaplan. Her last day of employment, her last

1 day of actually showing up for work will be different than
2 her last day of being an employee at Anaplan.

3 THE COURT: Well, what is your -- I was going to
4 use a more -- what is your view as to when she left
5 employment of nVent? When did you, number one, what is your
6 view and when did you find out about it?

7 MS. SCHAFFER: Your Honor, I'm not sure I can
8 provide my personal view because I wasn't a lawyer on the
9 case at the time.

10 THE COURT: I understand, but I want your view
11 because, you know, unfortunately, the lawyers have made --
12 the lawyers have made the lawyer's knowledge an issue and
13 that's why I really want to get it squared away. And,
14 frankly, I'm not here to prosecute lawyers. I don't want to
15 do that. I don't like to do that. I'm not going to do that
16 this morning for sure. If I have to later on, we'll do it,
17 but that's something not today.

18 So just tell us your view when you knew and what
19 you knew about the nVent and then Anaplan also. Not the end
20 of Anaplan we're worried about so much, the beginning of
21 Anaplan is most important here.

22 MS. SCHAFFER: Sure. So I'm going to skip ahead
23 to the Anaplan question, and I'm happy to go back to nVent
24 if it doesn't answer Your Honor's question.

25 THE COURT: You know that one, right. Okay, all

1 right. Go ahead.

2 MS. SCHAFFER: So, Your Honor, I didn't come into
3 this case until the very end of October of 2022, and at the
4 time that I came into the case, I don't remember the moment
5 that I learned that Ms. Deering was working for Anaplan. It
6 was just to me general knowledge. We talked about it openly
7 and when I came into the case, my understanding was that
8 discovery had been supplemented and was up to date, and it
9 was literally just not a question.

10 THE COURT: Okay.

11 MS. SCHAFFER: So when I received a call from
12 Mr. Schmitt on June 7th, I learned for the first time that
13 the defense didn't know about Anaplan. And the mistake that
14 I raise in the brief that I made on May 25th, part of the --
15 I'm not trying to excuse my mistake, but I had a bit of a
16 blind spot because I did not know that the defense didn't
17 know about Anaplan, and part of that is because we talked
18 about it openly.

19 THE COURT: When you say "we talked about it
20 openly", you and Ms. Deering?

21 MS. SCHAFFER: Me and Ms. Deering, Mr. Egan, and
22 Ms. Fessler knew that she was working at Anaplan at the time
23 that I was involved, and it was just not a question. Nobody
24 ever told me not to tell. Nobody ever told me not to
25 produce documents. It just wasn't on my radar as an issue

1 at all.

2 THE COURT: Okay.

3 MS. SCHAFFER: Does that answer that particular
4 question, Your Honor?

5 THE COURT: I think that's the best answer you can
6 give. I think it works, okay.

7 Do we have an nVent? Any difference? I know you
8 kind of gave me a version of how nVent ended. Do you have
9 any different version of how nVent ended?

10 MS. SCHAFFER: I don't, Your Honor. That is what
11 I understand from the record and from Ms. Deering.

12 THE COURT: Okay. All right. Go ahead with the
13 rest of your argument then. Thank you.

14 MS. SCHAFFER: Thank you, Your Honor.

15 I do want to back up a little bit.

16 THE COURT: Okay.

17 MS. SCHAFFER: Because as attorneys, our job is to
18 shepherd our client through this process. That's what we
19 do, and that is our job as the lawyer, whether our client is
20 herself a lawyer, whether our client is an executive,
21 whether our client is a garbage man. That is our job. And
22 our job is to prepare her. Our job is to review documents
23 thoroughly with her. Our job is to know what she's afraid
24 of when she goes into her deposition or when she is going
25 into a hearing, and our job is to correct her mistakes. Our

1 job is to be paying attention so that when our client makes
2 a mistake, we catch it, and we correct the record. And in
3 this case, that did not happen.

4 In this case, it is -- there have been mistakes.
5 Ms. Deering has made mistakes, and her lawyers have made
6 mistakes, but it was the job of her lawyers to correct the
7 mistakes.

8 Now, Your Honor, I do want to walk through the
9 allegations raised in the defendant's reply brief.

10 THE COURT: Please do.

11 MS. SCHAFFER: We requested a surreply, but they
12 raise a number of things that they say are evidence that Ms.
13 Deering was not being truthful.

14 For example, I'm just going to go through the
15 bullet point list that is from the reply brief, and I'll be
16 as quick as I can.

17 They say that she served supplemental
18 interrogatory responses. That was something that her lawyer
19 did, and it is true that a client is supposed to look at
20 that stuff and supposed to make sure it's true, but she
21 can't be held to a higher standard because she's a lawyer.
22 She's a client and she is supposed to be able to trust that
23 her lawyers are paying attention, are aware of what all of
24 the documents say and are submitting accurate documents.

25 THE COURT: I'm not sure if the courts make the

1 distinction you just did. I think the courts give a
2 lawyer-client more responsibility than a non-lawyer client
3 because a lawyer-client understands what's happening. You
4 know, non-lawyers don't understand anything really most of
5 the time. And so I think the courts have looked -- and tell
6 me if I'm wrong about my assumption about what the courts
7 have decided as to lawyer-clients and their obligation to
8 make sure that what they say and do is correct.

9 MS. SCHAFFER: Your Honor, I'm not aware of a
10 specific case on this issue.

11 THE COURT: Well, I asked Mr. Burkhard. He may be
12 or if he's not, maybe I'll have to correct my view of the
13 law, but whatever. Go ahead.

14 MS. SCHAFFER: Understood. Either way, Ms.
15 Deering is the client in this case, and so her lawyers
16 should be held to the standard of lawyers, which is to make
17 sure that things are accurate before they send them out.

18 Then she failed to provide documents to her
19 counsel in October of 2021 about Anaplan. Ms. Deering
20 provided documents to her lawyer about Anaplan. Just
21 because her lawyer didn't produce them doesn't mean that Ms.
22 Deering didn't provide them to her lawyer.

23 In terms of what happened in her deposition, Ms.
24 Deering made some misstatements. Some mistakes that her
25 lawyer who was there should have and could have corrected,

1 and had he corrected them at the time, we most likely
2 wouldn't be here.

3 And then they raised that she submitted a sworn
4 declaration with her resume in March of 2022. So the resume
5 that Ms. Deering submitted was for the proposition that her
6 work -- essentially to show her work history. She didn't
7 say, "this is my current employer, see my resume." She
8 said, "see my work history," and that's what it was. We all
9 have resumes that -- my current resume probably doesn't have
10 my current employer on it.

11 THE COURT: But I hope you wouldn't respond to
12 requests about where you're working by sending that resume
13 in, would you? When you know that it may not be totally
14 accurate?

15 MS. SCHAFFER: Of course not, but that wasn't the
16 question that was being asked.

17 THE COURT: Okay. All right.

18 MS. SCHAFFER: She was submitting it for the
19 purposes of her work history. And, again, her lawyers knew
20 at the time that that was submitted that she was working for
21 Anaplan. And what should have happened is a lawyer would
22 have looked at that and said why don't you add Anaplan to
23 your resume.

24 And then in terms of the two settlement
25 conferences and the damages calculation, Your Honor, the

1 damages calculation is the one I can speak to the most
2 clearly because it's the one that I did. And as I said in
3 my declaration, we have attorney-client communications that
4 I would feel more comfortable sharing in camera because I
5 don't have any interest in waiving the attorney-client
6 privilege, but they will show that Ms. Deering was not
7 attempting to hide Anaplan when I submitted that May 25th
8 damages calculation. And, in fact, it was my mistake. I
9 made a miscalculation and the documentation showing our
10 communication will support that.

11 Your Honor, the Court has the discretion to issue
12 whatever remedy the Court sees is appropriate in this case.
13 And in this case, dismissal simply isn't proper. There have
14 been mistakes. There have been mistakes that we have
15 attempted to correct as soon as we realized what the
16 mistakes were, and there are other remedies available to
17 Your Honor, but in this case, the issue relates to damages,
18 and it's not about the question of liability. It doesn't go
19 to the ultimate question, which is whether or not Ms.
20 Deering was retaliated against. It's a question about a
21 number. The number that a jury would award Ms. Deering if
22 they found she was wrongfully terminated. And in an effort
23 to try to correct the mistakes, we hired a forensic
24 economist. We've offered that economist to the defense.
25 We've offered Ms. Deering to the defense for another

1 deposition. And I understand their position that it's too
2 little too late but that is the remedy. It does cure the
3 mistake, and we'd like to be given the opportunity to do
4 that.

5 It is Ms. Deering's most precious right to be able
6 to appear in front of a jury and to be able to argue this
7 case in front of a jury on the merits. And the question
8 before that jury is was Ms. Deering retaliated against when
9 she filed a complaint with the Equal Employee Opportunity
10 Commission? We expect that the jury is going to say yes to
11 that question, and the issue of damages is a different
12 question. Your Honor could impact the question of damages
13 in a sanction. We could all be given an opportunity to hire
14 experts.

15 In this case, frankly, experts should have been
16 brought in from the very beginning. It's a high value case
17 with complications like RSU's and different employers and
18 things that, frankly, confused me, which is part of the
19 problem with my May 25th error.

20 And so we would ask that this Court continue the
21 case as has already been done, reopen discovery for the
22 limited purpose. We will provide the defense anything else
23 that they think they need even though we believe we've
24 produced everything. We will provide them with our expert
25 or their own if the Court will allow. We will allow

1 depositions to ensure that this issue is corrected, that the
2 defense is given a full opportunity to understand Ms.
3 Deering's damages and so that Ms. Deering is given her full
4 opportunity to present her case to a jury.

5 Unless Your Honor has questions, I have nothing
6 further.

7 THE COURT: Thank you.

8 MS. SCHAFFER: Thank you, Your Honor.

9 THE COURT: Let me just add one comment. You know
10 about the concept of Rule of Law. And the concept of Rule
11 of Law means that we here apply rules across the board no
12 matter who it is or why or what, but we do apply rules and
13 we expect the rules to be followed. You understand that.

14 MS. SCHAFFER: I do, Your Honor.

15 THE COURT: I hope you understand the implication
16 of my statement.

17 MS. SCHAFFER: I do, Your Honor.

18 THE COURT: All right. Thanks.

19 Mr. Burkhard, you've got five plus two minutes.
20 I'm going to give you seven. Do you want to put seven on
21 the clock because Mr. Burkhard complained that I took two of
22 his minutes, so I want to be fair to both sides. Okay. Go
23 ahead, please.

24 MR. BURKHARD: Thank you, Your Honor.

25 Your Honor, I try to avoid hyperbole in these

1 circumstances but, frankly, the explanation about nVent is
2 preposterous. The pay stub records are clear. She got
3 paid, and she only worked until October 22nd. It also
4 reflects that she got paid for her vacation, which was the
5 16th through the 22nd. The check date on that document is
6 October 29th. There is no additional documentation. There
7 is nothing anywhere to suggest, oh, I've got a sign-on bonus
8 I have to pay. I thought it was still working. And, more,
9 Your Honor, even if she thought that, what exactly was she
10 explaining when I asked her what her current job duties are,
11 if she was sitting on vacation and she knew she had already
12 resigned her employment, she was not going to be there, why
13 was she talking about her current job duties? It's all a
14 lie.

15 And none of that excuses the first lie, which is
16 what job efforts did you engage in after December 2020? You
17 see it at page 7 of our opening brief, and I list out the
18 testimony. I'm not scrolling through a document. There's
19 no confusion there. I simply asked her, "okay, which job
20 efforts did you engage in after December '20?" "I'm not
21 really sure. I started at nVent February 21st."

22 I said, "okay, did you search for any jobs after
23 February 21st?" "No." I asked her again, "so it's correct,
24 even though maybe you applied for a couple of positions in
25 between, you did not search for another job after

1 February 21?" "That is correct." She signed an errata
2 sheet a month later confirming her so-called testimony with
3 not one change to the deposition.

4 Now, Ms. Nelson says with respect to the
5 interrogatories that were supplemented previously, March of
6 '21, it's not her fault. That's the lawyers' fault. No,
7 it's not. Ms. Deering, as the client, whether you apply a
8 different standard or a higher standard or not, and I'll
9 come back to that in a moment. She, as the client, verified
10 those interrogatories under oath in April of '21 that listed
11 her as a contract lawyer not even listing nVent as her
12 employer. That's another act of perjury. Every step of the
13 way the design was let's hide the mitigation. Let's hide it
14 in March of '21 because it shows I actually got a job making
15 around 200,000. Then when I got to the deposition, let me
16 hide that I got a more lucrative job. And she got the offer
17 October 12th. She signed the employment October 12, 2021.
18 Is it even credible to argue she was being truthful when she
19 said I work at nVent and here are my duties, and I had not
20 engaged in any job efforts, even though she had signed an
21 employment agreement three weeks before her deposition?
22 That's not a memory issue. There's no I'm exhausted, I
23 can't remember where I work.

24 She testified it was disheartening and exhausting
25 to apply for jobs and not be able to get one. She just got

1 a very lucrative job with 500,000 RSU's three weeks earlier
2 and that wasn't disclosed. That's not her lawyers. That's
3 her. Okay.

4 There is spending put on the declaration with her
5 resume. Well, maybe it's not up to date. You're submitting
6 a resume to the Court detailing your employment experience,
7 and you know you testified in your deposition and didn't
8 mention Anaplan, so, of course, you submitted a resume that
9 says nVent to the present. That's March of '22. Sworn
10 declaration, not true. To this court. Settlement memos,
11 not true, using the wrong numbers. Ms. Deering saw those
12 documents.

13 Ms. Nelson tries to explain it was her mistake
14 that in the disclosure, the first time the plaintiff ever
15 provided a calculation of damages, May of '22, a month
16 before the trial, and as Ms. Nelson just said, they had all
17 kinds of conversations about it. Ms. Deering is intimately
18 involved in it. There's one person that knows the numbers
19 that were submitted to the judge that are wrong, it's Ms.
20 Deering. She knows what she was earning. She knows what
21 bonus she got at Anaplan. She knows the RSU's that she had
22 received and what had vested. She's aware of all of that,
23 yet a disclosure document comes to us in May that doesn't
24 send any red flags, doesn't say anything about Anaplan.

25 Ms. Nelson says the first time she learned about

1 that was June 7th, not really true.

2 On June 5th, when they submitted their exhibit
3 list, mind you no Bates numbers on those -- on that list,
4 Anaplan offer listed on there. We raised the issue and
5 said, wait, a second, we never got this document.

6 We had also earlier met and conferred, Your Honor,
7 about our motion in limine in which we said we're going to
8 move to exclude any evidence of damages beyond November of
9 '21 because they never updated anything related to her
10 compensation.

11 If they had actually produced these documents or
12 that everyone knew she was at Anaplan, wouldn't the first
13 thing out of her mouth then, that's not true, of course we
14 did. Even when they slipped in a 50th exhibit, which was a
15 special new exhibit that was not even on their list on
16 June 5th, on June 7th, all these compensation documents they
17 never produced, her tax returns, her W-2's that she had in
18 her possession way before June 7th of 2023. Just hand them
19 over, not even on the list of exhibits, as if everybody
20 knows it's just common knowledge that she was at Anaplan.

21 Well, it's not common knowledge when you ask a very
22 simple question to a deponent, who is a lawyer, and she lies
23 to your face that she didn't engage in any job efforts after
24 February of '21, even though she had just signed an offer
25 letter three weeks earlier. There's nothing that we could

1 have known about that. There's no way we could have known
2 that in fact she was not working for nVent anymore until
3 June 22, 2023, when we finally got the final nVent pay
4 stubs, which were never produced, never shared.

5 You'll see, Your Honor, Eighth Circuit, the Carey
6 case. It specifically addresses the fact that the two
7 individuals in that case were lawyers. It noted that fact
8 in analyzing under the facts and under your inherent power
9 that, yes, if you're going to engage in these kind of
10 abuses, the Court, the proper sanction is dismissal because
11 if you don't dismiss, there's no way to punish and deter
12 behavior, and certainly, we should be deterring such
13 behavior from lawyers, but all the other cases we cited,
14 they're not even lawyers and they still dismissed.

15 The *Knapp* case we detail in our opening brief, now
16 not a lawyer, unsophisticated, uneducated party, but lied in
17 her deposition, lied in her interrogatories, didn't produce
18 documents. Lawyers fault doesn't matter. Supreme Court and
19 Eighth Circuit says you don't get to hid behind your lawyers
20 mistakes. You choose your lawyers. That's the system of
21 justice that we have.

22 If the sanction of dismissal is not granted, then
23 this kind of conduct, there's no way to deter it. There's
24 no way to undue the prejudice to Lockheed Martin at this
25 stage in the proceeding, Your Honor. And we've cited

1 numerous cases in Eighth Circuit and outside that support
2 that proposition, and the plaintiffs have cited not one
3 analogous case, not one that involves perjury and these
4 kinds of discovery abuses that did not grant dismissal with
5 prejudice. Thank you, Your Honor.

6 THE COURT: All right. Thank you.

7 Well, I appreciate the comments of counsel.
8 They've been helpful. Not totally so, but we can't help
9 that, but I'm going to take this under advisement, and we'll
10 let you know soon because I know both parties are interested
11 in what in the outcome the reaction to the motion itself, so
12 we'll let you know soon. The Court is going to stand in
13 recess now. Thank you.

14 (Court adjourned at 10:42 a.m.)

15 * * *

16 **REPORTER'S CERTIFICATE**

17 I, MARIA V. WEINBECK, RMR, FCRR, certify that the
18 foregoing is a true and accurate transcript of my
19 stenographic notes, and is a full, true, and complete
20 transcript from the proceedings produced to the best of my
21 ability.

22
23 Certified by: s/ Maria V. Weinbeck
24 Maria V. Weinbeck, RMR-FCRR
25